

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**
Case No. 3:20-cv-00019-FDW

WILLIAM F. MACKEY,

Plaintiff,

v.

**JOINTLY-PROPOSED PRETRIAL
ORDER**

WELLS FARGO BANK, N.A.,

Defendant.

Pursuant to Section 4(c) of the Court's March 6, 2020 Case Management Order (Doc. 9), Plaintiff WILLIAM F. MACKEY and Defendant WELLS FARGO BANK, N.A. submit this Jointly-Proposed Pretrial Order.

I. JOINT STATEMENT OF THE CASE

In this lawsuit, Plaintiff Mackey asserts claims for race and sex discrimination in violation of federal civil rights statutes against Defendant Wells Fargo. Plaintiff Mackey is a current Wells Fargo Securities Operations Service Specialist 4 who began working for financial institutions that eventually became Wells Fargo on April 27, 1998. Plaintiff Mackey was working for Wachovia Corporation when it merged with Wells Fargo & Company in 2008. As a result of the merger of the two banks, Plaintiff Mackey had to apply for a new position at the newly merged company. Defendant Wells Fargo hired and promoted Plaintiff Mackey to the Securities Operations Service Specialist 3 position in 2010. Defendant Wells Fargo promoted Plaintiff Mackey to Securities Operations Service Specialist 4 in 2019 with a retroactive effective date of March 5, 2017.

I have already ruled that a statute of limitations applies to Plaintiff Mackey's race discrimination claims, such that he may only seek to assert and recover for claims occurring after December 11, 2015. Similarly, I have already ruled that a statute of limitations applies to Plaintiff Mackey's sex discrimination claims, such that he may only seek to assert and recover for claims occurring after March 14, 2018.

Plaintiff Mackey claims that Wells Fargo discriminated against him on the basis of his race and sex because it failed to promote him and it has paid Plaintiff Mackey less than similarly-situated comparators outside his protected classes. Plaintiff Mackey also claims that Wells Fargo discriminated against him by placing conditions for promotion on Plaintiff Mackey that did not apply to his non-African American male colleagues.

Defendant Wells Fargo denies that it discriminated against Plaintiff Mackey in any way. It asserts that the decisions regarding Plaintiff Mackey's pay and promotions were based on Plaintiff Mackey's job performance and Defendant Wells Fargo's application of its policies.

II. STIPULATIONS OF LAW AND FACT UPON WHICH THE PARTIES AGREE

A. Stipulations of Law

1. To state a failure to promote *prima facie* case, a plaintiff must show that: “(1) [he] is a member of a protected class; (2) [his] employer had an open position for which [he] applied or sought to apply; (3) [he] was qualified for the position; and (4) [he] was rejected for the position under circumstances giving rise to an inference of unlawful discrimination.” *Evans v. Techs. Applications & Serv. Co.*, 80 F.3d 954, 959–60 (4th Cir. 1996).

2. To state a *prima facie* case of wage discrimination, a plaintiff must show that he: “(1) ‘is a member of a protected class’; (2) ‘was paid less than an employee outside the class’ and (3) ‘the higher paid employee was performing a substantially similar job.’” *Bragg v. Bd. Of*

Governors of the Univ. of N. Carolina Constituent N.C. State Univ. at Raleigh, No. 5:14-CV-887-F, 2017 WL 384311, at *5 (E.D.N.C. Jan. 25, 2017) (quoting *Kess v. Mun. Emps. Credit Union of Baltimore, Inc.*, 319 F. Supp. 2d 637, 644 (D. Md. 2004)).

3. Discrimination claims under Section 1981 have a four-year statute of limitations. *White v. BFI Waste Servs., LLC*, 375 F.3d 288, 292 (4th Cir. 2004).

4. Title VII has a statute of limitations that allows individuals in North Carolina to pursue claims only arising 180 days prior to the filing of a Charge of Discrimination with the EEOC. 42 U.S.C. § 2000e-5(e)(1); *Raynor v. G4S Secure Sols. (USA) Inc.*, 283 F. Supp. 3d 458, 464 (W.D.N.C. 2017).

B. Stipulations of Fact

1. Plaintiff William Mackey is an African-American male who resides in Charlotte, North Carolina.

2. Defendant Wells Fargo Bank, N.A. is a national banking association that is authorized to do business, and has a significant presence, in Charlotte, North Carolina. Wells Fargo employs approximately 27,000 individuals in the greater Charlotte metropolitan area.

3. Plaintiff Mackey began working for First Union Corporation, a Wells Fargo predecessor, on April 27, 1998. He worked in several customer service roles for First Union. When First Union merged with Wachovia Corporation in 2004, Plaintiff Mackey became an Operations Specialist I. Plaintiff Mackey was subsequently promoted to Operations Specialist II and then to Operations Specialist III. Wells Fargo & Company merged with Wachovia on December 31, 2008, and Plaintiff Mackey became a Wells Fargo employee.

4. On July 19, 2010, Defendant Wells Fargo hired and promoted Plaintiff Mackey to the Securities Operations Service Specialist (“SOSS”) 3 position on the newly-created Charlotte

Tax Cost team and raised his salary from \$32,175.37 to \$33,134.40 in connection with the promotion.

5. Each SOSS level is a different position, with some different job responsibilities and different levels of compensation.

6. As a SOSS 3, Plaintiff Mackey was responsible for updating assets for trust accounts.

7. SOSS 5s possess more experience and work on more complex work requests or tasks than SOSS 3s and 4s.

8. Additionally, SOSS 5s have more management responsibilities than SOSS 3s and SOSS 4s, including writing procedures for the SOSS team, providing work direction for the team, and contributing to production or workflow improvements. SOSS 5s also have more customer contact than SOSS 3s and SOSS 4s.

9. Operations Manager Danny Nethken was Plaintiff Mackey's manager from January 2015 until his death in March 2020.

10. Defendant Wells Fargo has a salary range for most positions, including the SOSS 3 and SOSS 4 positions. The salary range is referred to as the "Base Salary Date." Base Salary Data contains three numbers: the threshold salary, which is the minimum salary for a position; the base MRP salary, also referred to as the midpoint; and the maximum salary. Defendant Wells Fargo sets salaries based on a percentage of the midpoint salary for a position.

11. Plaintiff Mackey received the following increases in his compensation as a SOSS 3 from Wells Fargo in 2011 to 2018:

Date	Raise	New Salary
March 2011	\$662.69	\$33,797.09
March 2012	\$490.06	\$34,287.15
March 2013	\$948.89	\$35,236.04
March 2014	\$837.98	\$36,074.02
March 2015	\$721.49	\$36,795.51
March 2016	\$551.93	\$37,347.44
March 2017	\$936.00	\$38,283.44
March 2018	\$1,123.20	\$39,406.64
April 2018	\$1,382.16	\$40,788.80

12. Plaintiff Mackey filed a Charge of Discrimination with the Equal Employment Opportunity Commission (“EEOC”) on September 10, 2018 in which he made race and sex discrimination claims based on his 2010 salary.

13. The EEOC dismissed the charge on the same day due to its determination that the statute of limitations had run on the claims.

14. Plaintiff Mackey filed his second Charge of Discrimination with the EEOC on December 3, 2018, again making race and sex discrimination claims based on his 2010 salary.

15. The EEOC issued a Dismissal and Notice of Rights to Plaintiff Mackey on September 13, 2019 in connection with his second charge.

16. Plaintiff Mackey was one of five SOSS 4s on the Charlotte team from 2019 to 2020. The other four were Cecile Johnson, Ana Taylor, Kathie Little, and Tracy Prince. The five SOSS 4s' salaries in 2019 and 2020 were as follows:

Name (race gender)	2019	2020
William Mackey (Black male)	\$51,584.00	\$52,582.40
Cecile Johnson (White female)	\$49,291.45	\$50,269.05
Ana Taylor (Hispanic female)	\$47,321.41	\$48,985.41
Kathie Little (White female)	\$49,215.75	\$50,255.75
Tracy Prince (White female)	\$48,064.50	Not applicable; no longer employed as a SOSS 4

III. BRIEF SYNOPSIS OF LEGAL OR FACTUAL CONTENTIONS ABOUT WHICH THE PARTIES HAVE BEEN UNABLE TO STIPULATE

The parties have been unable to stipulate about the differences in the job duties and responsibilities of Defendant Wells Fargo Bank, N.A.'s SOSS 3, 4, and 5 positions, the scope of Plaintiff Mackey's pay and promotion claims that are at issue in this action, and the scope of the comparators for Plaintiff Mackey's claims.

IV. LIST OF EXHIBITS

A. DEFENDANT'S EXHIBIT LIST

Ex. No.	Description	Stipulation - Authenticity	Stipulation - Admissibility	Objections	Identified By	Admitted
1	Plaintiff's October 5, 2017 questions regarding Wells Fargo's compensation practices that he submitted following town hall meeting	Yes	Yes	None.		
2	Plaintiff's September 10, 2018 Charge of Discrimination filed with the EEOC	Yes	No	Rule 403		
3	The EEOC's September 10, 2018 Dismissal and Notice of Rights issued to Plaintiff	Yes	No	Rule 403		
4	Plaintiff's December 3, 2018 Charge of Discrimination filed with the EEOC	Yes	Yes	None		
5	The EEOC's September 13, 2019 Dismissal and Notice of Rights	Yes	Yes	None		

6	Wells Fargo Team Member Handbook	Yes	Yes	Foundation; Rule 403.		
7	Plaintiff's January 29, 2010 Team Member Acknowledgment form	Yes	Yes	Foundation; Rule 403		
8	SOSS 3 Job Family Report	Yes	No	Foundation; Rule 403; Rule 106		
9	SOSS 4 Job Family Report	Yes	No	Foundation; Rule 403; Rule 106		
10	Shannon Claytor November 15, 2018 notes of call with Danny Nethken	Yes	Yes	Foundation; Hearsay		
11	Danny Nethken November 15, 2018 e-mail communication to Shannon Claytor	Yes	Yes	Foundation; Hearsay		
12	Shannon Claytor March 21, 2019 Memorandum	Yes	Yes	Foundation; Hearsay		
13	Anthony Castrillon PeopleSoft Report	Yes	No	Foundation; Rule 403; Rule 106		
14	Daniel Quantz PeopleSoft Report	Yes	No	Foundation; Rule 403; Rule 106		
15	Cecile Johnson PeopleSoft	Yes	No	Foundation; Rule 403;		

	Report			Rule 106		
16	Ana Taylor PeopleSoft Report	Yes	No	Foundation; Rule 403; Rule 106		
17	Kathie Little PeopleSoft Report	Yes	No	Foundation; Rule 403; Rule 106		
18	Tracy Prince PeopleSoft Report	Yes	No	Foundation; Rule 403; Rule 106		
19	Plaintiff's PeopleSoft Report	Yes	No.	Foundation; Rule 403; Rule 106		
20	Plaintiff's Pay Vouchers	Yes.	Yes	Rule 106		
21	Demonstrative exhibit: Plaintiff's salaries and raises as a SOSS 3	No	No	Foundation; Rule 403; Rule 106 Hearsay		
22	Demonstrative exhibit: Plaintiff's and other SOSS 4s' salaries from in 2017-2020	No	No	Foundation; Rule 403; Rule 106 Hearsay		

Defendant Wells Fargo Bank, N.A. specifically reserves its right to use any exhibits introduced by Plaintiff William F. Mackey and to offer additional exhibits, including but not limited to for rebuttal and/or impeachment purposes, based on developments during the trial.

B. PLAINTIFF'S EXHIBIT LIST

Ex. No.	Description	Stipulation - Authenticity	Stipulation - Admissibility	Objections	Identified By	Admitted
23	Employee information spreadsheet (WF002246)	No	No	Relevance, Foundation, Hearsay, Fed. R. Evid. 403		
24	2010 Securities Ops Service Spec 3 Job Description	Yes	No	Relevance, Fed. R. Evid. 403		
25	2010 Securities Ops Service Spec 4 Job Description	Yes	No	Relevance, Fed. R. Evid. 403		
26	Plaintiff's Performance Evaluations	Yes	No	Relevance, Hearsay, Fed. R. Evid. 403		
27	Plaintiff's Wells Fargo Job Applications	No	No	Relevance, Foundation, Hearsay, Fed. R. Evid. 403, Not produced during discovery		
28	Case Detail Note by Employee Relations Specialist Shannon Claytor	Yes	Yes			
29	January 11, 2019 Notes by Shannon Claytor	Yes	Yes			
30	March 25, 2019 "Conclusion" note	Yes	Yes			

	by Shannon Claytor”					
31	U.S. Department of Labor News Release: “Wells Fargo Agrees to Pay \$7.8 Million in Back Wages After U.S. Department of Labor Alleges Hiring Discrimination”	Yes	No	Relevance, Hearsay, Fed. R. Evid. 403, Not produced during discovery		
32	Washington Post article- “Wells Fargo CEO apologizes after blaming shortage of black talent for bank’s lack of diversity”	Yes	No	Relevance, Hearsay, Fed. R. Evid. 403, Not produced during discovery		
33	Demonstrative Exhibit: Chart with names, salary and race/gender of 2010 Charlotte Tax Cost Team	No	No	Relevance, Foundation, Hearsay, Fed. R. Evid. 403		
34	Demonstrative Exhibit: Chart with Midpoint Salaries from 2015 to Present	No	No	Relevance, Foundation, Hearsay, Fed. R. Evid. 403		

Plaintiff William Mackey specifically reserves its right to use any exhibits introduced by Defendant Wells Fargo, N.A. and to offer additional exhibits, including but not limited to for rebuttal and/or impeachment purposes, based on developments during the trial.

V. DESIGNATIONS

Neither party intends to designate any pleadings and discovery materials.

VI. LIST OF WITNESSES

A. DEFENDANT'S WITNESS LIST

Defendant WELLS FARGO BANK, N.A. will call:

1. Shannon Claytor
Wells Fargo Bank, N.A.
c/o Seyfarth Shaw LLP
121 West Trade Street, Suite 2020
Charlotte, North Carolina 28202
(704) 925-6060

Defendant Wells Fargo Bank, N.A. will call Claytor to establish the purpose of Wells Fargo's investigation into Plaintiff Mackey's complaints regarding his desire to be promoted to the Securities Operations Service Specialist 4 position and his salary and the manner in which it was conducted. Claytor also will be able to establish Wells Fargo's determinations and the actions it took based on its investigation.

Claytor also will be able to establish Mackey's compensation and his applications for promotions since December 11, 2015.

Defendant WELLS FARGO BANK, N.A. may call:

2. Sara VanderLugt
Wells Fargo Bank, N.A.
c/o Seyfarth Shaw LLP
121 West Trade Street, Suite 2020
Charlotte, North Carolina 28202
(704) 925-6060

Defendant Wells Fargo Bank, N.A. may call VanderLugt to establish Wells Fargo's determinations and the actions it took based on its investigation of Plaintiff Mackey's complaints regarding his desire to be promoted to the Securities Operations Service Specialist 4 position and his salary.

3. Brandi Anne Dotson
Wells Fargo Bank, N.A.
c/o Seyfarth Shaw LLP
121 West Trade Street, Suite 2020
Charlotte, North Carolina 28202
(704) 925-6060

Defendant Wells Fargo Bank, N.A. may call Dotson to establish Wells Fargo's determinations and the actions it took based on its investigation of Plaintiff Mackey's complaints regarding his desire to be promoted to the Securities Operations Service Specialist 4 position and his salary.

4. Julia Carreon
Wells Fargo Bank, N.A.
c/o Seyfarth Shaw LLP
121 West Trade Street, Suite 2020
Charlotte, North Carolina 28202
(704) 925-6060

Defendant Wells Fargo Bank, N.A. may call Carreon to establish Wells Fargo's determinations and the actions it took based on its investigation of Plaintiff Mackey's complaints regarding his desire to be promoted to the Securities Operations Service Specialist 4 position and his salary.

5. Sara Barten
Wells Fargo Bank, N.A.
c/o Seyfarth Shaw LLP
121 West Trade Street, Suite 2020
Charlotte, North Carolina 28202
(704) 925-6060

Defendant Wells Fargo Bank, N.A. may call Barten to establish Wells Fargo's determinations and the actions it took based on its investigation of Plaintiff Mackey's complaints regarding his desire to be promoted to the Securities Operations Service Specialist 4 position and his salary.

6. Maggie Moore Basu
Wells Fargo Bank, N.A.
c/o Seyfarth Shaw LLP
121 West Trade Street, Suite 2020
Charlotte, North Carolina 28202
(704) 925-6060

Defendant Wells Fargo Bank, N.A. may call Basu to establish Plaintiff Mackey's recent and current compensation.

Defendant Wells Fargo Bank, N.A. specifically reserves its right to call additional witnesses, including but not limited to for rebuttal and/or impeachment purposes, based on developments during the trial.

B. PLAINTIFF'S WITNESS LIST

1. William Mackey
c/o Hall and Dixon, PLLC
725 East Trade Street, Suite 115
Charlotte, North Carolina 28202
(704) 935-2656

Plaintiff William Mackey may call William Mackey to establish facts surrounding his lack of promotion and unequal pay and the effect Wells Fargo's alleged failure to promote and pay Plaintiff equally has had on Plaintiff.

Plaintiff William Mackey specifically reserves its right to call additional witnesses, including but not limited to for rebuttal and/or impeachment purposes, based on developments during the trial.

2. Gwendolyn Crowder
5425 Green Moss Lane
Charlotte, North Carolina 28208
(704) 777-0534

Plaintiff William Mackey may call Gwendolyn Crowder to establish the effect Wells Fargo's alleged failure to promote and pay Plaintiff equally has had on Plaintiff.

Plaintiff William Mackey specifically reserves its right to call additional witnesses, including but not limited to for rebuttal and/or impeachment purposes, based on developments during the trial.

3. Dwayne Harris
Center for Emotional Health
416 McCullough Drive, Suite 100
Charlotte, NC 28262
(704) 237-4240

Plaintiff William Mackey may call Dwayne Harris to establish the effect Wells Fargo's alleged failure to promote and pay Plaintiff equally has had on Plaintiff.

Plaintiff William Mackey specifically reserves its right to call additional witnesses, including but not limited to for rebuttal and/or impeachment purposes, based on developments during the trial.

4. Brittany Fritz
Center for Emotional Health
416 McCullough Drive, Suite 100
Charlotte, NC 28262
(704) 237-4240

Plaintiff William Mackey may call Brittany Fritz to establish the effect Wells Fargo's alleged failure to promote and pay Plaintiff equally has had on Plaintiff.

Plaintiff William Mackey specifically reserves its right to call additional witnesses, including but not limited to for rebuttal and/or impeachment purposes, based on developments during the trial.

5. Nancy Mank
Wells Fargo Bank, N.A.
c/o Seyfarth Shaw LLP
121 West Trade Street, Suite 2020
Charlotte, North Carolina 28202
(704) 925-6060

Plaintiff William Mackey may call Nancy Mank to establish facts surrounding the hiring for the Charlotte Tax Cost Team in 2010.

Plaintiff William Mackey specifically reserves its right to call additional witnesses, including but not limited to for rebuttal and/or impeachment purposes, based on developments during the trial.

6. Kathie Little
Wells Fargo Bank, N.A.
c/o Seyfarth Shaw LLP
121 West Trade Street, Suite 2020
Charlotte, North Carolina 28202
(704) 925-6060

Plaintiff William Mackey may call Kathie Little to establish facts surrounding her experience, compensation, promotion, duties and responsibilities of a similarly-situated Wells Fargo employee.

Plaintiff William Mackey specifically reserves its right to call additional witnesses, including but not limited to for rebuttal and/or impeachment purposes, based on developments during the trial.

7. John Irwin
Wells Fargo Bank, N.A.
c/o Seyfarth Shaw LLP
121 West Trade Street, Suite 2020
Charlotte, North Carolina 28202
(704) 925-6060

Plaintiff William Mackey may call John Erwin to establish facts surrounding his experience, compensation, promotion, duties and responsibilities of a similarly-situated Wells Fargo employee.

Plaintiff William Mackey specifically reserves its right to call additional witnesses, including but not limited to for rebuttal and/or impeachment purposes, based on developments during the trial.

8. Benjamin Hood
Wells Fargo Bank, N.A.
c/o Seyfarth Shaw LLP
121 West Trade Street, Suite 2020
Charlotte, North Carolina 28202
(704) 925-6060

Plaintiff William Mackey may call Benjamin Hood to establish facts surrounding his experience, compensation, promotion, duties and responsibilities of a similarly-situated Wells Fargo employee.

Plaintiff William Mackey specifically reserves its right to call additional witnesses, including but not limited to for rebuttal and/or impeachment purposes, based on developments during the trial.

9. Joel Williams
Wells Fargo Bank, N.A.
c/o Seyfarth Shaw LLP
121 West Trade Street, Suite 2020
Charlotte, North Carolina 28202
(704) 925-6060

Plaintiff William Mackey may call Joel Williams to establish facts surrounding training employees to perform on Defendant Wells Fargo's Estate Team.

Plaintiff William Mackey specifically reserves its right to call additional witnesses, including but not limited to for rebuttal and/or impeachment purposes, based on developments during the trial.

10. Ana Taylor
Wells Fargo Bank, N.A.
c/o Seyfarth Shaw LLP

121 West Trade Street, Suite 2020
Charlotte, North Carolina 28202
(704) 925-6060

Plaintiff William Mackey may call Ana Taylor to establish facts surrounding her experience, compensation, promotion, duties and responsibilities of a similarly-situated Wells Fargo employee.

Plaintiff William Mackey specifically reserves its right to call additional witnesses, including but not limited to for rebuttal and/or impeachment purposes, based on developments during the trial.

11. Tracy Prince
Wells Fargo Bank, N.A.
c/o Seyfarth Shaw LLP
121 West Trade Street, Suite 2020
Charlotte, North Carolina 28202
(704) 925-6060

Plaintiff William Mackey may call Tracy Prince to establish facts surrounding her experience, compensation, promotion, duties and responsibilities of a similarly-situated Wells Fargo employee.

Plaintiff William Mackey specifically reserves its right to call additional witnesses, including but not limited to for rebuttal and/or impeachment purposes, based on developments during the trial.

12. Bob Blood
Wells Fargo Bank, N.A.
c/o Seyfarth Shaw LLP
121 West Trade Street, Suite 2020
Charlotte, North Carolina 28202
(704) 925-6060

Plaintiff William Mackey may call Bob Blood to establish Defendant Wells Fargo's reasoning regarding Plaintiff's initial salary, subsequent salary and failure to promote Plaintiff.

Plaintiff William Mackey specifically reserves its right to call additional witnesses, including but not limited to for rebuttal and/or impeachment purposes, based on developments during the trial.

VII. EXPERT WITNESSES

Neither party intends to call an expert witness.

Each of the undersigned counsel for the parties hereby consents to entry of the foregoing Pretrial Order, which has been prepared in accordance with the Court's Case Management Order.

Respectfully submitted,

WILLIAM F. MACKEY

WELLS FARGO BANK, N.A.

By: /s/ Alesha S. Brown
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Attorneys for Defendant

Date: February 1, 2021

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**
Case No. 3:20-cv-00019-FDW

WILLIAM F. MACKEY,

Plaintiff,

v.

CERTIFICATE OF SERVICE

WELLS FARGO BANK, N.A.,

Defendant.

_____ /

I hereby certify that on February 1, 2021, I filed a true and correct copy of JOINTLY-
PROPOSED PRETRIAL ORDER with the Clerk of the Court using the CM/ECF system, which
will automatically send e-mail notification of such filing to the following attorney of record:

Alesha S. Brown
Hall & Dixon, PLLC
725 East Trade Street, Suite 115
Charlotte, North Carolina 28202

/s/ Frederick T. Smith

Frederick T. Smith
North Carolina Bar No. 45229
Attorney for Defendant